UMW Industries (1985) Sdn Bhd (Formerly known as UMW (Malaya) Sdn Bhd) v Lim Chee Hian @ Lim Iek Wha (Trading as Syarikat Zalal)

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NOS T–03–50 OF 1998 AND T–03–51 OF 1998

MOKHTAR SIDIN, ARIFIN ZAKARIA AND HASHIM YUSOFF JJCA

25 AND 30 DECEMBER 2004

Bankruptcy — Notice — Application to set aside — Request for bankruptcy notice to be issued — Whether made by an officer duly authorised by corporation or their solicitors — Whether injustice occasioned — Whether a curable defect — Bankruptcy Act 1967 ss 131, 133 & Bankruptcy Rules 1969 r 215

Civil procedure — Appeal — Adducing fresh evidence — Whether evidence which was available during trial can be adduced

By way of an application in form No 4, the appellant made a request for a bankruptcy notice. As a result of that a bankruptcy notice was issued and addressed to the respondent. When the respondent did not pay the amount stated in the notice, the appellant proceeded with the bankruptcy proceedings by filing a creditor's petition. It was the first time that the name of Mr Siew Weng Leong appeared and was identified as the legal executive and duly authorized officer to act for the appellant. The creditor's petition was accompanied by an affidavit of truth of statements of petition affirmed by the said Mr Siew Weng Leong. The respondent filed a notice of intention to oppose and filed an affidavit stating that he opposed the petition and disputing the judgment debt, the assignment of the debt and the summons upon which the judgment was obtained. The petition was heard by the senior assistant registrar ('SAR'). It was during the proceedings that the issues under s 133 of the Bankruptcy Act 1967 ('the Act') and r 215 of the Bankruptcy Rules 1969 ('the Rules') were raised by the respondent by stating that the request was not valid for the reasons: (i) the request was not made by any officer of the appellant duly authorized in that behalf under the seal of the corporation as required by s 133 of the Act; and (ii) there was no evidence to show the identity of the person who made the request on behalf of the appellant. Despite these objections, the SAR ordered adjudicating order and receiving order be made against the respondent. Dissatisfied, the respondent appealed to the judge in chambers who allowed the appeal and struck out the bankruptcy notice and the creditor's petition, but gave the appellant liberty to apply afresh. Instead of instituting a fresh proceeding against the respondent, the appellant appealed against the decision of the judge. The issue before this court was confined to whether the said judge was correct in applying s 133 of the Act and r 215 of the Rules in striking out the bankruptcy notice and the creditor's petition.

There was a second appeal in respect of an application by the appellant for leave to admit as further evidence: (i) the directors' circular resolution of the appellant dated 1 October 1987; and (ii) the letter of authority dated 1 October 1987 issued by appellant.

Held, dismissing the appeals with costs:

(1) The request for a bankruptcy notice to be issued is one of the steps to be taken in instituting a bankruptcy proceeding. Without the request, the bankruptcy notice could not be issued. Here, the request was deemed invalid due to lack of authority in that it was not made by an officer duly authorized by the appellant nor was it made by the solicitors for the appellant but by the appellant (a corporation) signed by an unknown person which contravened s 133 of the Act and r 215 of the Rules (see para 25).

(2) Although the request is innocent enough, it had the effect of causing injustice to the respondent. Such a defect was not curable under s 131 of the Act (see para 16).

(3) In the second appeal, as can be seen from the notes of evidence those documents were supposed to be in the possession of the appellant before the hearing and during the trial. There was no reason why those documents could not be produced at the hearing when the authority of Mr Siew Weng Leong to make the request was challenged. The reason tendered by the appellant for the non-production of those documents during the trial, ie due to time constraint, was not valid and cogent enough to justify the application. Furthermore, the production of those documents would not in any way affect this court's decision (see paras 29 and 32).

[**Bahasa Malaysia summary**

Melalui suatu permohonan menggunakan borang No 4, perayu telah memohon untuk notis kebankrapan. Notis kebankrapan dikeluarkan dan dialamatkan kepada responden. Apabila responden tidak membayar jumlah yang dinyatakan dalam notis tersebut, perayu terus memfailkan petisyen pemiutang. Ini adalah kali pertama nama En Siew Weng Leong muncul, yang dikenal pasti sebagai eksekutif undang-undang dan pegawai yang dibenarkan untuk bertindak bagi pihak perayu. Petisyen pemiutang telah disokong oleh afidavit menentusahkan petisyen yang diikrarkan oleh En Siew Weng Leong. Responden memfailkan notis keinginan untuk menentang dan memfailkan afidavit menyatakan yang dia menentang petisyen dan pertikaian hutang penghakiman, penyerahan hak hutang tersebut dan saman yang digunakan untuk dapatkan penghakiman tersebut. Petisyen didengar oleh penolong kanan pendaftar (PKP). Semasa pendengaran isu-isu di bawah s 133 Akta Kebankrapan 1967 ('Akta') dan k 215 Kaedah-kaedah Kebankrapan 1969 ('Kaedah tersebut') dibangkitkan oleh responden dengan menyatakan bahawa permohonan tersebut tidak sah kerana: (i) permohonan

tidak dibuat oleh pegawai perayu yang diberi kebenaran untuk berbuat demikian di bawah meterai syarikat tersebut seperti yang diperlukan di bawah s 133 Akta; dan (ii) tiada keterangan untuk menunjukkan identiti orang yang membuat permohonan bagi pihak perayu. Walaupun terdapat bantahan ini, PKP telah memberikan perintah hukuman dan perintah penerimaan terhadap responden. Terkilan, responden merayu kepada hakim dalam kamar yang telah membenarkan rayuannya dan membatalkan notis kebankrapan dan petisyen pemiutang tetapi memberi perayu kebenaran untuk memohon. Tanpa memulakan tindakan baru terhadap responden, perayu membuat rayuan ini terhadap keputusan hakim. Isu di hadapan mahkamah ini adalah terhad kepada sama ada hakim tersebut betul dalam memakai s 133 Akta dan k 215 Kaedah tersebut dalam membatalkan notis kebankrapan dan petisyen pemiutang

Terdapat rayuan kedua mengenai permohonan oleh perayu untuk kebenaran mengemukakan keterangan lanjut: (i) resolusi pengumuman pengarah-pengarah perayu bertarikh 1 Oktober 1987; dan (ii) surat kuasa bertarikh 1 Oktober 1987 yang dikeluarkan oleh perayu.

Diputuskan, menolak rayuan dengan kos:

(1) Permohonan untuk mengeluarkan notis kebankrapan adalah satu daripada langkah yang harus diambil dalam memulakan tindakan kebankrapan. Tanpa permohonan tersebut, notis kebankrapan tidak boleh dikeluarkan. Di sini, permohonan tersebut adalah taksah kerana tidak mempunyai autoriti dalam mana ia tidak dibuat oleh pegawai yang dibenarkan oleh perayu atau peguam cara perayu tetapi oleh perayu (sebuah syarikat) ditandatangani oleh seorang yang tidak dikenali yang melanggar s 133 Akta Kebankrapan dan k 215 Kaedah-Kaedah Kebankrapan (lihat perenggan 25).

(2) Walaupun permohonan tersebut adalah tidak berniat buruk, kesan permohonan tersebut telah mengakibatkan ketidakadilan kepada responden. Kecacatan tersebut tidak boleh diubati di bawah s 131 Akta (lihat perenggan 16).

(3) Dalam rayuan kedua, seperti yang boleh di lihat di dalam nota keterangan dokumen-dokumen tersebut sepatutnya dalam milikan perayu sebelum dan semasa perbicaraan. Tiada sebab kenapa dokumen-dokumen tersebut tidak boleh dikemukakan semasa perbicaraan apabila kekuasaan En Siew Weng Leong untuk membuat permohonan tersebut dicabar. Alasan yang diberi oleh perayu untuk tidak mengemukakan dokumen-dokumen tersebut semasa bicara, iaitu kerana kesuntukan masa, adalah tidak sah dan meyakinkan untuk menjadi alasan yang baik bagi permohonan tersebut. Lebih-lebih lagi kemasukan dokumen-dokumen tersebut tidak akan mempengaruhi keputusan mahkamah ini (lihat perenggan 29 dan 32).]

Notes

For cases on adducing fresh evidence in appeals, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 529–548.

For cases on application to set aside notice, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2172–2201.

For appeals see 1 *Halsbury's Laws of Malaysia* paras [10.11-001]–[10.11-054].

Cases referred to

Low Mun v Chung Khiaw Bank Ltd [1988] 1 MLJ 263 (refd)
Re Chen Sing Chew; ex parte Oriental Tin Smelters Sdn Bhd [1974] 2 MLJ 69 (refd)
Re Lai Hua Kian; ex parte Credit Corp (M) Bhd [1990] 2 MLJ 487 (folld)
Rohani @ Hamidah bt Nor v Sincere Leasing Sdn Bhd [1993] 1 AMR 225 (refd)

Legislation referred to

Bankruptcy Act 1967 ss 131, 133
Bankruptcy Rules 1969 r 215

Appeal from: Bankruptcy No 29–516 of 1989 (High Court, Kuala Terengganu)

Lee Yin Paik (Skrine) for the appellant.
Preetam Kaur (Khalid Mohamed with her) (Rithauddin & Azlin) for the respondent.

Mokhtar Sidin JCA (delivering judgment of the court):

[1] The appellant obtained judgment in default against the respondent for the sum of RM29,316.57 with interest. On 19 October 1989, by way of an application in form No 4, the appellant made a request for a bankruptcy notice. As a result of that a bankruptcy notice was issued whereby it was stated the judgment sum to be RM56,470.75 where the particulars are as follows:

		RM
(1)	Principal sum as per judgment dated 12 February 1987 in Kuala Lumpur High Court Suit No C 5724 of 1985	29,316.57
	Interest on RM29,316.57 at the rate of 18% per annum from 11 October 1984 to 7 November 1989 (1,854 days)	26,804.18
		56,120.75
	Costs of suit	350.00
		56,470.75

[2] The bankruptcy notice was dated 7 November 1989 and addressed to the respondent, Lim Chee Hian @ Lim Iek Wha. When the respondent did

not pay the amount stated in the notice, the appellant proceeded with the bankruptcy proceedings by filing a creditor's petition dated 10 May 1990. It was the first time that the name of Mr Siew Weng Leong, identified as the legal executive and duly authorized officer to act for the appellant appeared. The creditor's petition was accompanied by an affidavit of truth of statements of petition affirmed by the said Mr Siew Weng Leong on 10 May 1990.

[3] The respondent filed a notice of intention to oppose and filed an affidavit dated 12 June 1991 stating that he is opposing the petition and disputing the judgment debt, the assignment of the debt and the summons upon which the judgment was obtained.

[4] The petition was heard by the senior assistant registrar (SAR) on 23 June 1993, 9 May 1994, 25 June 1994, 2 July 1994, 9 July 1994 and 23 July 1994. It was during the proceedings that the issue under s 133 of the Bankruptcy Act 1967 and r 215 of the Bankruptcy Rules 1969 was raised by the respondent. Despite the objections, the learned SAR ordered adjudicating order and receiving order be made against the respondent. Being dissatisfied with that decision the respondent appealed to the judge in chambers. On 9 March 1996, the learned judge allowed the appeal by the respondent and struck out the bankruptcy notice and the creditor's petition but gave the appellant liberty to apply.

[5] Instead of instituting a fresh proceeding against the respondent since liberty was given to the appellant to file afresh, the appellant appealed against the decision of the learned judge. The issue in this appeal has been limited to whether the learned judge was correct in applying s 133 of the Bankruptcy Act 1967 and r 215 of the Bankruptcy Rules 1969 to strike out the bankruptcy notice and the creditor's petition.

[6] Before us, it was not disputed by the parties that the appellant had on 19 October 1989 made a request to the court that a bankruptcy notice be issued against the respondent. As a result of that a bankruptcy notice dated 7November 1989 was issued and served on the respondent on 18 November 1990. On the failure of the respondent to pay the amount stated in the bankruptcy notice, the appellant presented a creditor's petition against the respondent. The SAR who heard the petition granted adjudication order and receiving order against the respondent. Being dissatisfied with the decision of the learned SAR, the respondent appealed to the judge in chambers. The appeal was allowed by the learned judge on 9 March 1996.

[7] Before us, the learned counsel for the appellant submitted that the request to issue a bankruptcy notice was properly made in accordance with form 4 as provided for by the Bankruptcy Rules. The appellant's counsel submitted that there is no requirement in form 4 for the officer of the appellant to state that, 'he is authorized under the seal of corporation'. As such the request made by the solicitors for the appellant is valid. There is no necessity for the appellant's authorized officer to make the request. It was not disputed that

Mr Siew Weng Leong was the duly authorized officer under the seal and he was the one who presented the creditor's petition on behalf of the appellant.

[8] It was the contention of the appellant that s 133 of the Bankruptcy Act 1967 and r 215 of the Bankruptcy Rules 1969 are not applicable. Section 133 of the Bankruptcy Act provides:

> 133Acts of corporations, firms and mentally disordered persons
>
> For all or any of the purposes of this Act:
>
> (a) a corporation may act by any of its officers authorized in that behalf under the seal of the corporation;
>
> (b) (Not relevant).
>
> (c) (Not relevant).

[9] Rule 215 of the Bankruptcy Rules 1969 provides:

> 215Officer of corporation, etc.
>
> Where a corporation presents a petition or takes any other action under this Act, the officer of the corporation may act in his own name, stating that he is such officer duly authorized under seal; but a petition may be presented by the corporation, and signed by the officer on its behalf. Any person chosen by the corporation to act for it as agent, is an 'officer' within section 133, and if duly authorized under seal can act for the corporation.

[10] The learned counsel for the appellant also submitted that if there is any defect in the request it is curable under s 131 of the Bankruptcy Act because there was no evidence given by the respondent that he has suffered substantial injustice. The appellant's counsel stated that it is not a requirement that the request be served on the respondent. The request is only to be filed in court. In the present appeal the respondent had not seen the request before the bankruptcy notice was served on him and as such he could not be prejudiced by the request. There are no defects in the request, the bankruptcy notice and the creditor's petition. Even if there is a defect, s 131 of the Bankruptcy Act shall apply. Section 131 provides:

> 131Formal defect not to invalidate proceedings
>
> No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceedings is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

[11] The learned counsel for the respondent, on the other hand, submitted that the request was not valid for the following reasons:

(1) the request was not made by any officer of the appellant duly authorized in that behalf under the seal of the corporation as required by s 133 of the Bankruptcy Act; and

(2) there was no evidence to show the identity of the person who made the request on behalf of the appellant.

[12] Since the request did not comply with the provisions of s 133 of the Bankruptcy Act and r 215 of the Bankruptcy Rules, the request was invalid and the issuance of the bankruptcy notice pursuant to that invalid request would be null and void and also of no effect. The non-compliance of both provisions according to the respondent was not a 'formal defect' but 'defect in substance'. In view of the fact that there was no valid request being made for the issuance of the bankruptcy notice, the bankruptcy notice issued was void *ab initio*. Without the bankruptcy notice the respondent could not commit 'an act of bankruptcy'. He cited the judgment of Mohamed Azmi SCJ (as he then was) in *Low Mun v Chung Khiaw Bank Ltd* [1988] 1 MLJ 263 at p 265:

> As to the principle for construing bankruptcy notices, we agree with the view that since bankruptcy is entirely the creation of statute law, the rule of strict construction should be applied to the legislative words creating the act of bankruptcy.

[13] The learned counsel for the respondent cited to us the case of *Rohani @ Hamidah bt Nor v Sincere Leasing Sdn Bhd* [1993] 1 AMR 225. At p 230, Mahadev Shankar J (as he then was) said:

> The English equivalent is s 147 of the Bankruptcy Act 1914 which is commented upon at p 492 *et seq* of *Williams & Muir Hunter*.
>
> As stated at p 493 following *Re OCS* [1940] 2 KB 161 and *Re a Debtor* [478 of 1908] the English Court of Appeal has emphasized:
>
> > the extreme importance of great strictness in dealing with bankruptcy notices.
>
> As observed by the action of the bank aforesaid, bankruptcy proceedings can have serious consequences for a debtor and I feel obliged to adopt the same attitude unless it can manifestly be shown that the irregularity or the defects were immaterial and in no way affected the rights of the debtor.

[14] Further down at p 231, the learned judge reminded solicitors of the seriousness of bankruptcy proceedings:

> It has become common place for trained solicitors to apply for amendments of the date on which an act of bankruptcy has been committed even though this is a matter of simple arithmetical calculation. Bankruptcy proceedings are penal in nature and judgment creditors and their solicitors will be well advised to take note of their responsibility more seriously.

[15] Finally, the learned counsel for the respondent cited the decision in *Re Chen Sing Chew; ex parte Oriental Tin Smelters Sdn Bhd* [1974] 2 MLJ 69, which is directly on point with the present appeal in respect of non-compliance of s 133 and r 215 where it was held that the whole bankruptcy proceedings was null and void.

[16] We are of the view that in any bankruptcy proceeding, it shall be commenced with the request for the issuance of the bankruptcy notice. With that request, the bankruptcy notice is to be issued and served on the judgment debtor which, in this case, is the appellant. On the failure on the part of the judgment debtor to pay the amount stated in the bankruptcy notice within seven days after its service, he is deemed to commit an act of bankruptcy. When an act of bankruptcy had been committed by a judgment debtor, then the judgment creditor can present a creditor's petition. Arising from that creditor's petition an adjudicating order and a receiving order (AO and RO) could be made against the judgment debtor. This is precisely what happened to the respondent in the present appeal. Although the request is innocent enough, the effect of the request has caused injustice to the respondent. For the above reasons, we agree with the learned counsel for the respondent and the learned judge that the defect is not curable under s 131 of the Bankruptcy Act.

[17] It was also pointed out to us that Mr Siew Weng Leong was the authorized officer at the material time. At all material times he was empowered with the authority to take any action or step in the proceedings (including bankruptcy proceedings) and issue instruction to solicitors on behalf of the appellant. MrSiew Weng Leong himself gave evidence that he was a person authorized under the seal of the appellant and this was in accordance with the letter of authority. The appellant's counsel submitted that even though the letter of authority was dated 21 September 1990 it was to take effect from 1988 in accordance with the testimony of Mr Siew Weng Leong and this was not disputed by the respondent because Mr Siew Weng Leong was not cross-examined on that. With the greatest respect to the appellant's counsel, the mere non cross-examination of Mr Siew Weng Leong on this point, in our view, did not constitute the acceptance that Mr Siew was the authorized officer. It is clear to us that the letter of authority was issued pursuant to the directors' circular resolution also dated 21 September 1990. Both documents were produced as exhs 'JC–1A' and 'JC–1B'. JC–1A is the directors' circular resolution while JC–1B is the letter of authority. It is pertinent to refer to some relevant paragraphs of the letter of authority:

> (3) Upon non-payment of any of the aforesaid debts or sums or part thereof, to commence and prosecute all lawful actions and proceedings including any or all forms of execution proceedings, including garnishment, bankruptcy and winding-up proceedings, the issue of Judgment Debtor Summons and Writ of Seizure and Sale as the case may be for the recovery of the same and to represent the Company in all such actions and proceedings.
>
> (4) To complete, authenticate, sign or swear or affirm any and all relevant documents, forms and notices and affidavits in respect of the Aforesaid Debts Or Sums and all lawful actions and proceedings.
>
> (5) …

(6) To instruct any advocate and solicitor of the High Court of Malaya and the High Court of Borneo in Sarawak and Sabah to act on behalf of the company in respect of the above matters.

THAT any act or thing done by the said SIEW WENG LEONG in respect of the above matters prior to the date hereof has been duly ratified and confirmed.

[18] The directors' circular resolution is worded as follows:

AUTHORITY TO EXECUTE AFFIDAVITS AND OTHER LEGAL DOCUMENTS PERTAINING TO LEGAL CASES ON DEBT COLLECTION OF THE COMPANY RESOLVED:

THAT pursuant to Directors' Circular Resolutions referenced UMWI(1985)/85/87/EA and UMWI(1985)/88/3/EA dated 13 September 1985 and 17 June 1988 respectively in respect of the appointment of Mr Lee Kok Beng and Mr Lai Sam Yong to act on behalf of the Company on all legal cases on debt collection, Mr SIEW WENG LEONG (NRIC No 6352622) of 3rd Floor, The Corporate, Jalan Utas (15/7), Batu Tiga Industrial Estate, 40000 Shah Alam, Selangor Darul Ehsan be authorized to act on behalf of the Company as stated in the Letter of Authority, a copy of which is attached hereto, in place of Mr Lai Sam Yong.

THAT the Common Seal of the Company be affixed onto the said Letter of Authority.

THAT Directors' Circular Resolution referenced UMWI(1985)/88/3/EA be hereby cancelled.

It is hereby noted that the following persons are presently authorized to represent the Company in the matter referred to above on behalf of the Company:

a) Mr Lee Kok Beng (UMWI(1985)/85/87/EA);

b) Mr Siew Weng Leong (UMWI(1985)/90/19/EA).

[19] From the above, it is clear to us that Mr Siew Weng Leong was appointed to replace Mr Lai Sam Yong. Before the above circular, there were two officers being authorized to act on behalf of the appellant, namely Mr Lee Kok Beng and Mr Lai Sam Yong. Their appointments were under the circular UMWI (1985)85/87/EA. Those appointments were effective until the date of the above circular, ie 21 September 1990. Under the above circular the appointment of Mr Lee Kok Beng was continued whereas the appointment of Mr Lai Sam Yong was revoked and replaced by Mr Siew Weng Leong. In our view, prior to 21 September 1990, only Mr Lee Kok Beng and Mr Lai Sam Yong could act for the appellant and not Mr Siew Weng Leong. After 21 September 1990, only Mr Lee Kok Beng and Mr Siew Weng Leong could act for the appellant. That being the case, Mr Siew Weng Leong had no authority to act for the appellant at the material time. Though the appellant's counsel contended that the last paragraph of the letter of authority of Mr Siew Weng Leong enabled him to act for the appellant prior to 21 September 1990, we could not find anywhere in the above circular which allowed him to do so. It is more so because

the circular resolution said Mr Siew Weng Leong was appointed to replace MrLai Sam Yong. We are of the view that if Mr Siew Weng Leong acted on behalf of the appellant prior to 21 September 1990, then he had acted illegally without any authority. If the request was made by him then he had acted without authority.

[20] Let us now look at the request:

REQUEST FOR ISSUE OF BANKRUPTCY NOTICE

To: The Senior Assistant Registrar

High Court, Kuala Terengganu.

1) We, UMW Industries (1985) Sdn Bhd (formerly known as UMW (Malaya) Sdn Bhd) of PO Box 52, 40700 Shah Alam, Selangor Darul Ehsan, hereby request that a Bankruptcy Notice be issued by this Court against Lim Chee Hian @ Lim Iek Wha of 941, Jalan Besar, Dungun, Terengganu.

2) The said Lim Chee Hian @ Lim Iek Wha has for the greater part of the past one year resided at 941, Jalan Besar, Dungun, Terengganu, within the jurisdiction of this Court.

3) We produce an office copy of the final Judgment against the said Lim Chee Hian @ Lim Iek Wha obtained by us in the High Court at Kuala Lumpur on the 12 February 1987.

4) Execution on the said Judgment has not been stayed.

Dated 9 October 1989

Sgd

Solicitors for the Judgment Creditor above-named

Sgd

UMW Industries (1985) Sdn Bhd

(formerly known as UMW (Malaya) Sdn Bhd)

c/o Messrs Skrine & Co, Straits Trading Building,

No 4, Leboh Pasar Besar,

50050 Kuala Lumpur.

[21] First of all, the above request was made by the appellant (the corporation) and not by any officer of the company. Though there was a signature above the name of the company, it is a signature of an unknown person. No evidence was given by the appellant as to whose signature appeared above the name of the appellant. There is no evidence to show that the signature is the signature of Mr Siew Weng Leong. If it is, then he would be acting outside his authority.

As can be seen, the request was made on 9 October 1989 while Mr Siew Weng Leong got his authority only on 21 September 1990. Looking at the request, we are of the view that the request was made by the appellant as a company and not made by an authorized officer or by any officer because no name of the officer appeared anywhere in the request. This is in direct contravention of r 215 of the Bankruptcy Rules.

[22] The appellant contended that the solicitors could act on behalf of the appellant to make the request. The respondent conceded to this and indeed the law permits such a request being made by solicitors on behalf of a company which in this case is the appellant. But the respondent disputed that the request was made by the solicitors for the appellant. Looking at the request, it is clear to us that though the name of the solicitors appeared in the request, the request was not made by the solicitors. As we have stated earlier, the request was made by the appellant themselves and the name of the solicitors appeared only as a notification that they are the solicitors for the appellant. In our view, the request was not made by the solicitors.

[23] To support his contention, the learned counsel for the appellant cited *Re Lai Hua Kian; ex parte Credit Corp (M) Bhd* [1990] 2 MLJ 487 where it was held that the request for issue of a bankruptcy notice is prescribed in form 4 to the appendix to the rules. The form allows a solicitor to request for the issue of the bankruptcy notice irrespective of whether the judgment creditor was a corporation or a firm or an individual. In our view, that case could easily be distinguished from the present case because the solicitors in the present case did not make the request.

[24] We agree with the learned judge and the learned counsel for the respondent that there was no valid request in the present case. We are also in agreement with the learned trial judge that the case of *Re Chen Sing Chew; ex parte Oriental Tin Smelters Sdn Bhd* [1974] 2 MLJ 69 applies. In that case the creditors obtained judgment against the debtor in the Sessions Court whereby the debtor was ordered to pay the judgment debt and costs by monthly instalments. The debtor failed to comply with this order. The judgment creditors therefore took out a judgment debtor summons and a consent order was made on 4 February 1972 that the judgment debt was to be paid by instalments with effect from 16 February 1972 and in default of any one instalment the balance was to become due and payable forthwith. The judgment debtor defaulted and on 5 July 1972 the judgment creditor commenced bankruptcy proceedings. The judgment debtor challenged the proceedings on several grounds. On one of them at p 70, Wan Hamzah J (as he then was) stated:

> The judgment-debtor in his affidavit raises objection to the proceedings on yet another ground. It is contended that the bankruptcy proceedings are bad due to lack of authority for Mr N Takai to institute the proceedings on behalf of the Oriental Tin Smelters Sdn Bhd. The petition for bankruptcy was signed by Mr N Takai, a director of the judgment creditors, and dated 27 October 1972. When the

validity of the proceedings was challenged an affidavit affirmed by Mr N Takai was filed in which he stated that he had been duly authorized by the judgment-creditors to act on their behalf in all matters in connection with the bankruptcy proceedings against the judgment-debtor. A written authority was attached to the affidavit bearing the seal of the company but it was not dated. When Mr N Takai was cross-examined, he disclosed that the authority was given to him on 1 March 1973. It is clear that when he signed the petition on 27 October 1972 he had no such authority. Ialso find another irregularity in this case. The affidavit certifying the truth of the statements in the petition bears the date 23 October 1972 ie earlier than the date of the statements.

Therefore I hold that the bankruptcy proceedings were a nullity … .

[25] In the present appeal, we are of the view that the request is one of the steps to be taken in instituting a bankruptcy proceeding. Without the request, the bankruptcy notice could not be issued. We find that the request is invalid due to lack of authority. Firstly, we find that the request was not made by an officer duly authorized by the appellant nor was it made by the solicitors for the appellant. The request was made by the appellant (a corporation) signed by an unknown person which contravened s 133 of the Bankruptcy Act and r 215 of the Bankruptcy Rules.

[26] For the above reasons, we find that the learned judge was correct when he held that the bankruptcy proceeding was a nullity and struck out the bankruptcy notice and the creditor's petition. The appeal is hereby dismissed with costs. The deposit is to be paid to the respondent as part of the taxed costs.

THE SECOND APPEAL

[27] We have inadvertently left out the judgment in respect of Civil Appeal No T–03–51 of 1998 which we have also dismissed earlier. We now give our reasons for dismissing the appeal.

[28] The appeal in Civil Appeal No T–03–51 of 1998 is in respect of an application by the appellant for leave to admit as further evidence:

(a) the director's circular resolution of UMW Industries (1985) Sdn Bhd dated 1 October 1987 (LPM 1);

(b) the letter of authority dated 1 October 1987 issued by UMW Industries (1985) Sdn Bhd (LPM 2).

[29] We agreed with the learned trial judge in dismissing the application. As can be seen from the notes of evidence those documents were supposed to be in the possession of the appellant before the hearing and during the trial. We see no reason why those documents could not be produced at the hearing when the authority of Mr Siew Weng Leong to make the request was challenged. We agreed with the learned judge that the reason tendered by the appellant as the non-production of those documents during the trial, ie due to time constraint, was not valid and cogent enough to justify the application.

[30] Looking at those two documents which were found in the record of appeal, it is clear to us that those documents would be in direct contradiction of the director's circular resolution dated 21 September 1990 and especially the letter of authority where it is stated:

> That any act or thing done by the said Siew Weng Leong in respect of the above matters prior to the date hereof has been ratified and confirmed.

[31] The above caption clearly show that before this letter of authority, MrSiew Weng Leong was never authorized to act for the appellant. This raised reasonable doubt as to the authenticity of the documents, LPM 1 and LPM 2. In our view, these documents were not in existence prior to the trial. They were made after the hearing had commenced.

[32] In our view, the production of those documents would not in any way affect our decision because we have stated earlier in our decision that there is no evidence to show that the signature on the Request was that of Mr Siew Weng Leong.

[33] For the above reasons, we dismissed the appeal in Civil Appeal No T–03–51 of 1998 with costs.

Appeals dismissed.

Reported by AG Kalidas